

REMARKS

Claims 1, 3-11, 13-21 and 23-33 are currently pending in the above-identified application, with claims 1, 11 and 21 being independent. In this Amendment, claims 1, 3, 9, 11, 13, 19, 21, 23, 29 and 31-33 have been amended, and claims 2, 12 and 22 have been cancelled.

Claims 1, 11 and 21 have been amended to specify that the sample vessel is adapted to receive a sample tab, and to specify that the one or more than one upgraded primary calibration algorithm is developed on the spectroscopic apparatus by combining some, or all of a calibration data set derived from a primary calibration set and obtained from one, or more than one other apparatus with additional data obtained from the spectroscopic apparatus using a calibration set smaller than the primary calibration set and comprising samples distinct from those of the primary calibration set.

Support for this amendment is provided at least in the following paragraphs of the specification: [0019], [0026], [0029], [0039], [0068] (including incorporated U.S. Patent No. 6,651,015), [0069], [0070], [0082], [0084], [0086], [0088], [0096], [0097], [0100], [0103], [0105], [0109], [0124] and [0131].

Rejection under 35 U.S.C. § 112, second paragraph

The Office Action rejected claims 1-33 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite with respect to the manner in which the one or more than one upgraded primary calibration algorithm is produced. Without conceding the propriety of the rejection, Applicant submits that it has been rendered moot by the presently-amended claims, which specify that the additional data from the spectroscopic apparatus is obtained using a calibration set smaller than the primary calibration set and comprising samples *distinct from* those of the primary calibration set.

Reconsideration and removal of this rejection is respectfully requested in view of the foregoing comments and amendments.

Claim Rejections under 35 U.S.C. § 103(a)

Claims 1-33 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,846,492 in view of U.S. Patent No. 5,459,677, Wehlburg, Greensil, Ozdemir, Sum, Despagne or Swierenga. Applicant respectfully traverses this rejection.

Applicants submit that the cited references do not teach or suggest, either individually or in combination, the presently-claimed spectroscopic apparatus, which includes a sample slot adapted to receive a sample tab, and one or more than one upgraded primary calibration algorithm for one or more than one analyte, the one or more than one upgraded primary calibration algorithm in operative association with the spectroscopic apparatus and developed on the spectroscopic apparatus by combining some, or all of a calibration data set derived from a primary calibration set and obtained from one, or more than one other apparatus with additional data obtained from the spectroscopic apparatus using a calibration set smaller than the primary calibration set and comprising samples distinct from those of the primary calibration set.

Accordingly, the presently claimed apparatus is inventive in view of the cited references.

Applicant respectfully requests that the rejections under 35 U.S.C. § 103(a) be withdrawn in view of the foregoing amendments and comments.

CONCLUSION

Applicant submits that the above-identified application is now in a condition for allowance, and favorable reconsideration and prompt allowance of these claims are respectfully requested. Should Examiner believe that anything further is desirable in order to place the application in better condition for allowance, Examiner is invited to contact Applicant's undersigned attorney at (202) 775-5771.

In the event this paper is not considered to be timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together

with any additional fees that may be due with respect to this paper, may be charged to counsel's Deposit Account No. 01-2300, referencing docket number **026806-00014**.

Respectfully submitted,
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